

ESTTA Tracking number: **ESTTA320360**Filing date: **12/04/2009**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Malt-O-Meal		
Entity	Corporation	Citizenship	Minnesota
Address	2700 IDS Center 80 South Eighth Street Minneapolis, MN 55402 UNITED STATES		

Attorney information	John A. Clifford Merchant & Gould 3200 IDS Center 80 South Eighth Street Minneapolis, MN 55402 UNITED STATES jclifford@merchantgould.com Phone:612.336.4616
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Registration Subject to Cancellation

Registration No	3489085	Registration date	08/19/2008
Registrant	GILSTER-MARY LEE CORPORATION 1037 State Street, P.O. Box 227 Chester, IL 62233 UNITED STATES		

Goods/Services Subject to CancellationClass 030. First Use: 1999/01/31 First Use In Commerce: 1999/01/31
All goods and services in the class are cancelled, namely: Breakfast cereal**Grounds for Cancellation**

Abandonment	Trademark Act section 14
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Attachments	petition for cancellatio_20091204161600.pdf (3 pages)(104352 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/John A. Clifford/
Name	John A. Clifford
Date	12/04/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD

Malt-O-Meal Company,

Petitioner,

v.

Gilster-Mary Lee Corporation

Registrant.

)
)
) Cancellation No. _____
)

) Registration No.: 3,489,085

) Mark : CEREAL 2 GO

) Registration Date: August 19, 2008
)

PETITION FOR CANCELLATION

To The Assistant Commissioner for
Trademarks
ATTN: BOX TTAB
2900 Crystal Drive
Arlington, VA 22202-3513

Dear Sir:

Malt-O-Meal Company, a corporation duly organized and existing under the laws of Minnesota, with a mailing address of 2700 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402, believes that it will be damaged by the registration of the mark show in Registration No. 3,489,085, registered August 19, 2008 by Gilster-Mary Lee Corporation., a Missouri Corporation with a mailing address of 1037 State Street, PO BOX 227, Chester IL 62233, and hereby petitions for cancellation of said registration of the mark. The grounds for opposition are as follows:

1. Registrant has obtained under the provisions of the Trademark Act of 1946 as amended, registration on the Principal Register of the trademark CEREAL 2 GO for "breakfast cereal" (INT. CL. 30).
2. Petitioner is the owner of U.S. Application No. 78/863,476 which was filed on April 18, 2006 for the mark CEREAL BOWL TO GO for ""breakfast cereal" (INT.

CL. 30). Petitioner is a producer of breakfast cereal and has a commercial interest in its trademark, and its product. Registration no. 3489085 has been asserted as a bar to registration in application Serial No. 78863476, causing damage to Petitioner.

3. Upon information and belief, Registrant is no longer using the CEREAL 2 GO mark, and has stopped use with no intent to resume use.
4. A review of A.C. Neilson retail sales data shows no current sales of relevant products by Registrant.
5. On information and belief, Registrant was not using the mark in the ordinary course of trade at the time it filed the statement of use it filed on or about April 23, 2008.
6. On information and belief, between January 31, 1999 and the present time, there have been one or more periods of time equal to or greater than 3 consecutive years during which Registrant did not use its mark in the ordinary course of trade.
7. Registrant has abandoned the mark shown in Registration No. 3,489,085.
8. Registration No. 3,489,085 causes damage to Petitioner.

WHEREFORE, Petitioner asks that its Petition for Cancellation be sustained and that registration of the term CEREAL 2 GO and design set forth therein be cancelled.

Please direct all correspondence to the attention of:

John A. Clifford
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910
612-336-4616
Fax: 612-332-9081

Petitioner hereby appoints; Brian H. Batzli, Reg. No. 32,960; John A. Clifford, Reg. No. 30,247; Gregory C. Golla; Scott W. Johnston, Reg. No. 39,721; D. Randall King; Andrew S. Ehard; Christopher J. Schulte, Danielle I. Mattessich and Scott Oslick as its attorneys with the full power to represent the Petitioner in connection with this proceeding.


Please charge any fees or credit any overpayment to Deposit Account No. 13-2725 of Petitioner's counsel noted above.

Respectfully submitted,

Malt-O-Meal Company

By its attorneys,

Date: 12-4-09



John A. Clifford
MERCHANT & GOULD P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910
612.336.4616

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Cancellation was served on Gilster-Mary Lee Corporation by first class mail, postage prepaid on this 4th day of December, 2009 addressed to:

Gilster-Mary Lee Corporation
1037 State Street
PO Box 227
Chester, IL 62233

Date: 12-4-09


John A. Clifford